

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

02/06/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

M. Cearfoss  
Deputy

LC 2001-000613

FILED: \_\_\_\_\_

STATE OF ARIZONA

WILLIAM B BURKE

v.

CHARLES W VESLEY

MARK A NERMYR

MESA CITY COURT  
REMAND DESK CR-CCC

RULING  
SUSTAIN/REMAND

MESA CITY COURT

CIT. NO. 740491

CHARGE: 1. DUI  
2. BAC .10 OR GREATER WITHIN 2 HOURS OF DRIVING

DOB: 01-11-1963

DOC: 09-04-2000

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement since its assignment on January 10, 2002. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered the record of the proceedings from the Mesa City Court, and the memoranda submitted by counsel.

Appellant, Charles W. Vesley, was arrested and charged with Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor, in violation of A.R.S. Section 28-1381(A)(1); and Driving With a Blood Alcohol Concentration Greater Than .10 Within 2 Hours of Driving, a class 1 misdemeanor, in violation of A.R.S. Section 28-1381(A)(2). Appellant entered pleas of not guilty. Appellant filed a Motion to Suppress which was heard by the Honorable Paul Eppich on April 19, 2001. In an order dated May 2, 2001, Judge Eppich denied Appellant's Motion to Suppress. Thereafter, the parties appeared in open court and waived their rights to a jury trial and submitted the case to the Court on the basis of departmental police reports. Appellant was found guilty of both charges. On August 14, 2001, Appellant was ordered to serve 90 days in jail, 60 days were suspended pending completion of an alcohol or drug screening, and a counseling or treatment program. Appellant was ordered to pay a fine in the total amount of \$1,420.50. Appellant filed a timely Notice of Appeal in this case.

The only issue on appeal is whether the trial court erred in denying Appellant's Motion to Suppress based upon an alleged denial of Appellant's Fourth Amendment rights pursuant to the United States Constitution, and Appellant's rights under the Arizona Constitution Article II, Section 8. Appellant contends that a DUI roadblock such as utilized by the Mesa Police Department at the time of Appellant's arrest was unreasonable, and all fruits flowing from Appellant's arrest should be suppressed. The sufficiency of the legal basis to warrant police utilization of a DUI roadblock is a mixed question of law

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and fact.<sup>1</sup> An appellate court must give deference to a trial court's factual findings in the context of a hearing on a Motion to Suppress, including findings regarding the witnesses' credibility and the reasonableness of inferences drawn by the witnesses.<sup>2</sup> This Court must review those factual findings using an abuse of discretion standard.<sup>3</sup> Only when a trial court's factual finding, or inference drawn from the finding, is not justified or is clearly against reason and the evidence, will an abuse of discretion be established.<sup>4</sup> This Court must review *de novo* the ultimate question whether the proffered reasons for the roadblock furnish a justifiable basis for their use in this case.<sup>5</sup>

In evaluating whether a justifiable basis exists for a DUI roadblock or checkpoint, this Court must consider: (1) the State's interest in curbing drunk driving; (2) the effectiveness of the roadblock or checkpoint in serving those purposes; and (3) the degree of interference with individual liberty interests.<sup>6</sup> The Arizona Supreme Court has approved sobriety checkpoints chosen after research to determine problem DUI areas within a city and utilized by the Tucson Police Department.<sup>7</sup> The Court found the Simmons roadblock was effective in promoting a valid State interest of deterrence of drunk driving based upon statistical evidence showing decrease in alcohol-related accidents after the checkpoints were established.

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<sup>1</sup> See State v. Gonzalez-Gutierrez, 187 Ariz. 116, 927 P.2d 776 (1986); State v. Magner, 191 Ariz. 392, 956 P.2d 519 (App. 1998).

<sup>2</sup> Id.

<sup>3</sup> State v. Rogers, 186 Ariz. 508, 510, 924 P.2d 1027, 1029 (1996).

<sup>4</sup> State v. Chapple, 135 Ariz. 281, 297, 660 P.2d 1208, 1224 (1983); State v. Magner, 191 Ariz. at 397, 956 P.2d at 524.

<sup>5</sup> See State v. Tykwinski, 170 Ariz. 365, 824 P.2d 761 (App. 1991).

<sup>6</sup> Michigan Department of State Police v. Sitz, 496 U.S. 444, 110 S.Ct. 2481, 110 L.Ed.2d 412 (1990); State ex rel Ekstrom v. Justice Court of the State of Arizona in a for Kingman Precinct No. 1, 136 Ariz. 1, 663 P.2d 992 (1983).

<sup>7</sup> State v. Superior Court (real party in interest Simmons), 143 Ariz. 45, 691 P.2d 1073 (1984).

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Appellant concedes a valid State's interest in curbing drunk driving. The record also reflects that the roadblocks used by the Mesa Police Department were in the same locations that previous successful roadblocks had been established.<sup>8</sup> Sergeant Peter's also testified that the media was involved in the DUI checkpoints and that one of the purposes was to serve as a visible deterrence to people driving after they've been drinking.<sup>9</sup>

Finally, the intrusion upon individual liberties were minimal. Officer Schramm testified that Appellant's contention of waiting 10-15 minutes was incorrect.<sup>10</sup> Officer Schramm never saw traffic backed up to a half-mile in length.<sup>11</sup> At the time Appellant's vehicle was stopped, traffic was light and Lt. Kozak of the Mesa Police Department testified that people were waiting no more than a minute.<sup>12</sup>

Having determined that a factual basis exists to support the trial court's ruling denying Appellant's Motion to Suppress, this Court also determines *de novo* that said facts do establish a justifiable basis for the Mesa Police Department to have utilized a DUI roadblock or checkpoint on the date of Appellant's arrest. The record demonstrates the State's interest in curbing drunken driving, that the roadblock utilized by the Mesa Police Department was effective in serving that purpose as a visible deterrent to drunk driving, and the DUI roadblock or checkpoint imposed only a minimal intrusion upon Appellant's liberty interests, in that Appellant was forced to wait no longer than one minute in traffic.

IT IS THEREFORE ORDERED sustaining the order denying Appellant's Motion to Suppress.

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<sup>8</sup> See Sgt. Peter's testimony in RT of April 19, 2001, at page 39.

<sup>9</sup> Id. at page 40.

<sup>10</sup> Id. at page 30.

<sup>11</sup> Id.

<sup>12</sup> Id at page 63.

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IT IS FURTHER ORDERED sustaining the judgments of guilt and sentences imposed by the Mesa City Court.

IT IS FURTHER ORDERED remanding this matter back to the Mesa City Court for all further and future proceedings in this case.